

37 Am. Jur. 2d Fraud and Deceit § 84

American Jurisprudence, Second Edition | May 2021 Update

Fraud and Deceit

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IV. False Representations

C. Matters of Futurity; Promises and Statements of Intention

1. In General; Statements as to Events in Future

§ 84. General rule against liability

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[Employer's misrepresentations as to employee's or agent's future earnings as actionable fraud, 16 A.L.R.3d 1311](#)

Forms

[Am. Jur. Pleading and Practice Forms, Fraud and Deceit § 214](#) (Instruction to jury—Representation regarding future act or promise not fraudulent—Exception for present intent not to perform)

Generally, fraud must relate to a present or preexisting fact,¹ and, although they may give rise to an action for breach of contract,² mere unfulfilled promises to do a particular thing in the future do not constitute fraud in and of themselves.³ Similarly, mere predictions,⁴ projections,⁵ or expressions of opinion about what will occur in the future,⁶ including results to be anticipated in the future from known and recognized conditions,⁷ do not constitute fraud even though they turn out to be false, at least where they are not made with intent to deceive, and where the parties have equal means of knowledge,⁸ or the subject is equally open to the investigation of both,⁹ and an examination has not been fraudulently prevented.¹⁰ Such statements are generally regarded as mere expressions of opinion,¹¹ or mere promises or conjectures,¹² or trade talk or puffing,¹³ which must have been understood by the other party to be such¹⁴ and on which the other party has no right to rely.¹⁵ As one court has observed, mere optimism, even excessive optimism, is not actionable in fraud.¹⁶

CUMULATIVE SUPPLEMENT

Cases:

Under Maryland law, alleged statements by employee of company that prepared and administered standardized college admission test advising test taker and his father, upon company's canceling test score, that the option of providing documentation to individual score review panel was the best approach and that company would very likely preserve test taker's score, were merely estimates or opinions and thus could not be basis for fraud. [Cherdak v. ACT, Inc., 437 F. Supp. 3d 442 \(D. Md. 2020\)](#).

Opinions and predictions cannot form the basis of a fraud claim because they do not speak to matters of fact; thus, a representation consisting of promise or a statement as to a future event will not serve as basis for fraud, even though it was made under circumstances as to knowledge and belief which would give rise to an action for fraud had it related to an existing or past fact. [April Beguesse, Inc. v. Rammell, 328 P.3d 480 \(Idaho 2014\)](#).

[END OF SUPPLEMENT]

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Footnotes

¹ § 63.

² [Merrill Lynch & Co. Inc. v. Allegheny Energy, Inc., 500 F.3d 171 \(2d Cir. 2007\) \(applying New York law\)](#).

³ § 87.

⁴ [Sindecuse v. Katsaros, 541 F.3d 801 \(8th Cir. 2008\) \(applying Missouri law\)](#); [Onusko v. JP Morgan Chase Bank, NA, 824 F. Supp. 2d 635 \(D. Md. 2011\) \(applying Maryland law\)](#); [General Retirement System of City of Detroit v. UBS, AG, 799 F. Supp. 2d 749 \(E.D. Mich. 2011\) \(applying New York law\)](#); [Ussery v. Children's Healthcare of Atlanta, Inc., 289 Ga. App. 255, 656 S.E.2d 882 \(2008\)](#); [Country Cove Development, Inc. v. May, 143 Idaho 595, 150 P.3d 288 \(2006\)](#).

⁵ [Grove v. Principal Mut. Life Ins. Co., 14 F. Supp. 2d 1101 \(S.D. Iowa 1998\) \(applying Iowa law\)](#); [Illinois Non-Profit Risk Management Ass'n v. Human Service Center of Southern Metro-East, 378 Ill. App. 3d 713, 318 Ill. Dec. 732, 884 N.E.2d 700 \(4th Dist. 2008\)](#).

⁶ [Koch v. Koch Industries, Inc., 969 F. Supp. 1460 \(D. Kan. 1997\)](#), *aff'd in part, rev'd in part on other grounds*, 203 F.3d 1202, 53 Fed. R. Evid. Serv. 663, 46 Fed. R. Serv. 3d 204 (10th Cir. 2000) (applying Kansas law); [Pacesetter Motors, Inc. v. Nissan Motor Corp. in U.S.A., 913 F. Supp. 174 \(W.D. N.Y. 1996\) \(applying New York law\)](#); [Gontrum v. Mayor and City Council of Baltimore, 182 Md. 370, 35 A.2d 128 \(1943\)](#).

⁷ [Herman v. Mutual Life Ins. Co. of New York, 108 F.2d 678, 127 A.L.R. 1458 \(C.C.A. 3d Cir. 1939\)](#); [Wade v. Chase Manhattan Mortg. Corp., 994 F. Supp. 1369 \(N.D. Ala. 1997\)](#), *aff'd*, 132 F.3d 1461 (11th Cir. 1997) (applying Alabama law); [Lescher v. Baird, 173 Ark. 1033, 294 S.W. 17 \(1927\)](#).

⁸ [Lescher v. Baird, 173 Ark. 1033, 294 S.W. 17 \(1927\)](#); [Gontrum v. Mayor and City Council of Baltimore, 182 Md. 370, 35 A.2d 128 \(1943\)](#); [Kennedy v. Flo-Tronics, Inc., 274 Minn. 327, 143 N.W.2d 827 \(1966\)](#).

⁹ [Bell v. Southern Home Bldg. & Loan Ass'n, 140 Ala. 371, 37 So. 237 \(1904\)](#); [Lescher v. Baird, 173 Ark. 1033, 294 S.W. 17 \(1927\)](#); [Halpern v. Cafarelli, 98 N.J.L. 77, 118 A. 684 \(N.J. Sup. Ct. 1922\)](#).

- ¹⁰ Lescher v. Baird, 173 Ark. 1033, 294 S.W. 17 (1927).
- ¹¹ Glen Holly Entertainment, Inc. v. Tektronix, Inc., 100 F. Supp. 2d 1086 (C.D. Cal. 1999) (rejected on other grounds by, Petersen v. Allstate Indem. Co., 281 F.R.D. 413 (C.D. Cal. 2012)) (applying California law); McCutchen Co., Inc. v. Media General, Inc., 988 So. 2d 998 (Ala. 2008); Jobe v. Akowchek, 259 A.D.2d 735, 687 N.Y.S.2d 417 (2d Dep't 1999).
- ¹² Millen Industries, Inc. v. Flexo-Accessories Co., Inc., 5 F. Supp. 2d 72 (D. Mass. 1998) (applying Massachusetts law); General Retirement System of City of Detroit v. UBS, AG, 799 F. Supp. 2d 749 (E.D. Mich. 2011) (applying New York law); Griffin v. State Bank of Cochran, 312 Ga. App. 87, 718 S.E.2d 35 (2011).
- ¹³ Flegles, Inc. v. TruServ Corp., 289 S.W.3d 544 (Ky. 2009).
Trade talk or puffing, generally, see §§ 79 to 83.
- ¹⁴ Engemann v. Allen, 201 Ky. 483, 257 S.W. 25 (1923); Halpern v. Cafarelli, 98 N.J.L. 77, 118 A. 684 (N.J. Sup. Ct. 1922); O'Dell v. Appalachian Hotel Corporation, 153 Va. 283, 149 S.E. 487, 68 A.L.R. 629 (1929); Bushnell v. Elkins, 34 Wyo. 495, 245 P. 304, 51 A.L.R. 13 (1926).
- ¹⁵ § 252.
- ¹⁶ Flegles, Inc. v. TruServ Corp., 289 S.W.3d 544 (Ky. 2009).